



Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Los Angeles

Date: JAN 11 2000

IN RE: Obligor: [REDACTED]
Bonded Alien: [REDACTED]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the Immigration and Nationality Act, 8 U.S.C. 1103.

IN BEHALF OF OBLIGOR: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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prevent clearly unwarranted
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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

JAN 11 2000 - 041100

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the bond will be cancelled.

The record indicates that on June 12, 1995 the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 16, 1998 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (the Service) for removal at 8:00 a.m. on December 17, 1998 at 300 North Los Angeles Street, Room 7621, Los Angeles, CA 90012. The obligor failed to present the alien, and the alien failed to appear as required. On December 29, 1998, the district director informed the obligor that the delivery bond had been breached.

On January 28, 1999, an appeal was filed by the Indemnitor which was denied by the Service as the indemnitor had no standing in this matter. On March 25, 1999, the obligor, requesting a motion to reopen, filed an appeal. The Service granted the appeal and the case was reopened, the bond breach was rescinded and the bond was reinstated. A Notice to Deliver Alien dated April 28, 1999 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Service for removal at 8:00 a.m. on April 28, 1999 at 300 North Los Angeles Street, Room 7621, Los Angeles, CA 90012. The obligor again failed to present the alien, and the alien failed to appear as required. On May 7, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that it never received any demand to surrender the alien on April 28, 1999.

On appeal, the obligor asserts that the Service is in violation of the Amwest/Reno Settlement Agreement entered into on June 22, 1995, by the Immigration and Naturalization Service and Far West Surety Insurance Company by failing to send the required questionnaire to the obligor. The obligor provided a copy of an August 1997 Service memorandum to all Service offices which provided that all bond appeal forwarded to the AAO without evidence that a questionnaire was provided shall be rescinded.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3).

A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(Emphasis supplied.) The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form I-352 listed 412 E. Commercial Street, Los Angeles, CA 90012 as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the second Notice to Deliver Alien was sent to the obligor at 412 E. Commercial Street, Los Angeles, CA 90012 on March 29, 1999. This notice demanded that the obligor produce the bonded alien for removal on April 28, 1999. Contrary to the obligor's assertions on appeal, the receipt also indicates that the obligor received notice to produce the bonded alien on March 31, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

However, the record is devoid of evidence that the required questionnaire was provided to the obligor. Since the district director violated the Amwest/Reno Settlement Agreement, the decision declaring the bond breached will be withdrawn, and the bond will be cancelled.

ORDER: The appeal is sustained. The decision declaring the bond breached is withdrawn, and the bond is cancelled.